

## **Guidelines and Recommendations for Administering the “In-Person Demonstration” Requirement of Oregon Ballot Measure 114 (BM114)**

*BM 114 requires an “In-person demonstration of the applicant’s ability to lock, load, unload, fire and store a firearm before an instructor certified by a law enforcement agency.” These guidelines and procedures are not as intended as legal advice, and an agency or instructor that chooses to use them is solely responsible for doing so. Agencies and law enforcement certified instructors are strongly advised to consult their own legal counsel before deciding how to implement the live demonstration required by BM 114.*

### ***Equipment Needed***

- 1)** One or more firearms of any type (pistol, revolver, shotgun, rifle). The firearm need not be operable (a training gun or gun with removed firing pin).
- 2)** One or more rounds of ammunition to fit the firearm (use of inert training rounds highly encouraged).
- 3)** If the firearm uses a magazine, one operable magazine for loading and unloading.
- 4)** An operable cable or trigger lock, or a locking pistol safe or other locking container with the appropriate key or combination available.
- 5)** One Oregon Purchase Permit In-Person Demonstration Certificate.
- 6)** A table, counter or other flat surface to lay the firearm, ammunition and magazine (if applicable) on.

### ***Demonstration Procedures***

1. Obtain applicant’s identification and verify their name. Note the type of ID they provided on the Certificate. Have the applicant print their name and sign the Certificate.
2. If the instructor is charging a fee for the demonstration, obtain the required fee and note that it was paid on the bottom of the Certificate along with the amount.

3. Note whether the applicant has requested a reasonable accommodation due to a disability, and indicate whether a reasonable accommodation will be provided. (See FAQ #9 below). In order to maintain the applicant's medical privacy, the type of disability and the type of accommodation provided should not be noted on the Certificate.
4. Instructors are strongly encouraged but not required to review the firearm safety rules printed on the Certificate.
5. To begin the demonstration, the firearm to be used for the demonstration should be unloaded and should have an engaged trigger or safety lock or be in a locked container. Instructor should remove the firearm from the container or remove the lock, verify the firearm is unloaded, and show the applicant that the firearm is unloaded.
6. If the applicant is being given a reasonable accommodation for a disability, instructor should modify the steps below as needed.
7. Lay the unloaded firearm, one or more rounds of ammunition, and if applicable a magazine on the table in front of the applicant. Tell the applicant that they need to demonstrate their ability to lock, load, unload, fire and safely store a firearm. Ask if they have any questions. (Instructor may demonstrate the steps if they choose.)
8. The instructor should designate a "safe direction" for the applicant to keep the firearm muzzle oriented during the demonstration. A "safe direction" is one in which an unintended discharge would not result in injury.
9. Direct the applicant to load the firearm. Observe the applicant load the firearm with at least one round of ammunition. If the firearm uses a magazine observe them load the magazine with at least one round of ammunition, insert the magazine into the firearm and chamber a round. For revolvers, have the applicant put at least one round into the cylinder and close the cylinder.

10. Direct the applicant to press the trigger to demonstrate the ability to fire the firearm. Observe the applicant press the trigger to demonstrate how to fire the weapon.
11. Direct the applicant to unload the firearm and observe them do so. Verify that the firearm is unloaded.
12. Direct the applicant to lock the unloaded firearm with the available lock or locking container, and observe them do so. If an applicant has difficulty with a particular portion of the demonstration, ask them to repeat that step.
13. After the applicant has demonstrated each step, initial the appropriate step on the Certificate, print and sign your name, enter the date the demonstration was performed, and enter the Law Enforcement agency that certified you as an instructor. (You may wish to have your printed name and certifying law enforcement agency filled out ahead of time.)
14. Give the applicant the original certificate and maintain an electronic or paper copy for your records. An easy way to do this is to take a photograph of the completed Certificate with your phone and email it to yourself.

### ***Frequently Asked Questions***

#### **1. Is live fire required?**

BM 114 requires that a person demonstrate the ability to fire a firearm, but it does not contain language that requires the person actually fire a firearm with live ammunition. An agency or instructor has discretion to use live ammunition and live fire if they wish, but they should discuss the liability and safety concerns with local counsel and their insurance carrier before proceeding. Depressing the trigger without actually firing a live round demonstrates the ability to “fire” the firearm. For safety reasons, agencies and instructors should consider using inert training (i.e., “dummy”) rounds to administer the demonstration.

**2. What is meant by, "... lock?"**

Our interpretation of, "lock" is securing the firearm with security device (i.e., a cable lock, trigger lock, lockbox, etc.). This also satisfies the requirement to demonstrate their ability to safely "store" the firearm.

**3. Who can administer the demonstration?**

BM 114 requires the demonstration to be administered by "an instructor certified by a law enforcement agency." This does not require the instructor to be a sworn law enforcement officer. Agencies have discretion to certify individuals both within and outside their organization as an instructor. Once certified, these individuals may conduct the live demonstration and issue a certificate to show that the person completed the required demonstration. If an agency certifies a private instructor (a person who is not part of their organization) the agency should strongly consider providing training the instructor on the process and expectations for these demonstrations and providing a copy of this document. Agencies who certify private instructors will need to document the name of the certified instructor and date they were certified. Permit agents will need to verify that the private instructor was in fact certified by a law enforcement agency in order to accept the Certificate.

**4. Are there exceptions to the in-person demonstration requirement?**

BM 114 contains no exceptions to the in-person demonstration requirement, however there are certain classes of people who are certified by state or federal government agencies to use and carry firearms as a matter of law. An agency or instructor may, but is not required, to issue a certificate that the person has demonstrated their ability to lock, load, unload, fire and safely store a firearm if:

- the person is an active or reserve sworn law enforcement or corrections officer in any US jurisdiction;
- the person is an active parole or probation officer with proof of recent weapons qualification in any US jurisdiction;

the person is an active or reserve tribal police officer;  
the person is an active or reserve federal law enforcement officer,  
the person is on active duty or current reserve duty with any branch  
of the US Armed Forces or National Guard;  
the person has current identification as a retired law enforcement  
officer qualified to carry a firearm under LEOSA, 18 USC § 926 (HR  
218);  
the person is currently certified by the Oregon Department of Public  
Safety Standards and Training as an armed security guard.

**5. Does it matter which type of firearm is used for the demonstration? Is a non-firing or training gun acceptable?**

The ballot measure does not specify a firearm type, nor does it require the individual to demonstrate their ability with every type of firearm they will purchase. Simply demonstrating their ability on “a firearm” is sufficient. This can include a semi-automatic pistol, revolver, shotgun, rifle, etc. Non-firing or training guns are sufficient to satisfy the requirement, so long as they allow the individual to complete the steps required by law (i.e. they can demonstrate loading, unloading, depressing the trigger, etc.).

**6. Does the individual need to load the firearm to capacity?**

No. Demonstrating loading and unloading with one round is sufficient.

**7. Are we required to provide a firearm for the demonstration? Can an individual bring their own firearm to perform the demonstration?**

For safety and liability reasons, it is recommended that an agency or certified instructor provide an inoperable firearm, inert ammunition and a suitable locking device. Agencies and instructors have complete discretion to allow individuals to utilize their own firearm, but are strongly encouraged to consult with their own legal counsel and insurance carrier before accepting the liability and safety risks of this choice.

**8. Should we document which firearm was used for the demonstration?**

There is no requirement to document the make, model, or type of firearm used for the demonstration.

**9. What do we do if a person has a disability that prevents or limits their ability to complete all or part of the demonstration?**

The Americans with Disabilities Act requires that government agencies and private organizations or persons who provide services to the public must provide a person with a disability a “reasonable accommodation” to help them participate in activities or access services available to persons without disabilities. Agencies and certified instructors should consult local counsel about providing reasonable accommodations in the event an individual has a disability that prohibits or limits them in being able to perform some aspects of the demonstration, and to determine whether an accommodation is reasonable. Failing to offer a reasonable accommodation may result in a lawsuit against the agency or certified instructor. Examples of accommodations that may be reasonable include, but are not limited to:

1. Modifying the order of the demonstration.
2. Utilizing a different firearm type. As an example, if an individual cannot lock the slide to the rear on a semi-automatic pistol, consider utilizing a revolver, bolt-action rifle, etc.
3. Utilizing a different type of security device to secure the firearm.
4. Having the individual verbalize the proper procedure for steps they cannot perform due to physical disability.

**10. The certification form lists the firearm safety rules. What if an individual violates one of them?**

The firearm safety rules are provided solely as information that an agency or instructor may wish to review with an individual performing a live demonstration, and for the applicant’s knowledge. Choosing to review these safety rules is solely within the discretion of the agency or instructor,

and is not required by BM 114. Because these safety rules are not a required element of BM 114, they should not be used as a factor in whether the person can demonstrate the ability to lock, load, unload, fire and store a firearm.

**11. Can I modify the procedure?**

Agencies and instructors have complete discretion to modify or change the procedures or documentation of the in-person demonstration. An agency or instructor could choose to have live fire training as part of the demonstration if they wish. The Certificate form, these procedures and FAQs are provided solely as an example of how this demonstration can be done, in hopes that it will be relatively consistent across the state. There is no legal requirement to use any of these. If an agency or instructor chooses to make changes, they should consult local counsel and their insurance carrier to discuss the potential liability and safety concerns.

**12. What if a person cannot “pass” all or part of the demonstration?**

BM 114 does not require that an individual *successfully* demonstrate the ability to lock, load, unload, fire and safely store a firearm, it only requires them to demonstrate *their* ability. The Measure does not contain any standards about the level of proficiency the person must demonstrate. Because BM 114 completely lacks any standards to determine whether a person successfully “passes” the demonstration, if the agency or instructor determines that a person has not done well enough to “pass” they may face a lawsuit. That is particularly true if the person has a disability that limits their ability in regard to the demonstration. One option would be to review the demonstration steps with the person and have them repeat all or part of the demonstration.

**13. Is an agency or instructor required to provide training to the individual on how to perform the steps?**

BM114 does not require an agency or instructor to train an individual on the steps required for the in-person demonstration. It is up to the agency or instructor as to whether to provide instruction or not. An instructor may choose to demonstrate the steps that the applicant will be asked to perform. Instructors should recognize that BM 114 prevents a person from obtaining a firearm until after they have demonstrated their ability to lock, load, unload and store a firearm. If the person has never owned or possessed a firearm, it may be very difficult for them to learn to perform the required steps.

#### **14.What do we do with the completed Certificate?**

The applicant will need to provide the Certificate to a permit agent in order to prove they completed this required demonstration. The agency or instructor should keep a copy of the completed certification form, and **give the original to the person performing the demonstration.**